



# Internal Audit Report

Office of the Legal Defender  
December 2000



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# Internal Audit Department

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December 7, 2000

Andrew Kunasek, Chairman, Board of Supervisors  
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Janice K. Brewer, Supervisor District IV  
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We have completed our FY Year 2001 review of the Maricopa County Office of the Legal Defender (OLD). The audit was performed in accordance with the annual audit plan that was approved by the Board of Supervisors. Overall, we found OLD to effectively manage its operations and services. We also identified areas needing improvement. These, along with our recommendations, are detailed in the attached report. The report highlights are:

- OLD effectively manages attorney caseload through case management software. Case management would be further advanced through use of a report writer with flexible graphics and department-wide reporting capabilities.
- OLD effectively manages its administrative functions and operations. However, internal controls can be strengthened in the areas of payroll processing, fixed asset tracking, and trust fund administration.

Attached are the executive summary, detailed findings and recommendations, and OLD's response. We have reviewed this information with the Department Director and appreciate the excellent cooperation provided by OLD management and staff. If you have questions, or wish to discuss items presented in this report, please contact Joe Seratte at 506-6092.

Sincerely,

A handwritten signature in cursive script that reads "Ross L. Tate".

Ross L. Tate  
County Auditor



## **Table of Contents**

<b>Executive Summary</b>	<b>1</b>
<b>Introduction</b>	<b>3</b>
<b>Department Accomplishments</b>	<b>7</b>
<b>Detailed Information</b>	<b>8</b>
<b>Department Response</b>	<b>18</b>

## **Executive Summary**

### **Case Management (Page 8)**

The Office of the Legal Defender (OLD) manages and monitors its 31 attorneys' caseloads individually through a caseload management software application. The application has limited department-wide reporting and analysis capabilities. Our review of reported data found no areas of unbalanced caseloads. However, an automated monitoring and reporting function would enhance OLD's ability to efficiently utilize department personnel and effectively manage attorney caseload. OLD should continue to pursue incorporating a software application that includes enhanced reporting capabilities.

### **Office Operations (Page 12)**

We reviewed OLD administrative operations, including financial reporting, payroll processing, fixed asset tracking, travel and training expenses, and administration of client trust funds. We found OLD effectively manages its administrative functions and operations. We also noted three areas in which internal controls could be strengthened. Enhancing procedures concerning fixed asset tracking, payroll reconciliation, and segregation of duties over the client trust fund would provide a more effective system of internal control and improve the safeguarding of County resources.

### **System User Access and Security Controls (Page 15)**

OLD appears to have established adequate user access controls over its system, however, no written authorization is required or documentation is kept of user access levels. Furthermore, OLD has not developed a security policy in accordance with County policy A1605 – Electronic Information Resource Security. Inadequate user access and security controls diminish the reliability of data and increase risk of destruction or inappropriate disclosure of data. OLD should strengthen its user access and security controls.

## **System Backup and Recovery (Page 16)**

OLD has not developed a current business continuity plan to ensure continued business operations in the event of a disaster. The department's current off-site storage location is not adequate to protect system backups, ensuring continued operations for all potential disasters. Inadequate business continuity planning, including improper backup storage, may result in lost data, expensive recovery efforts, and potential business interruption. OLD should strengthen its backup and recovery controls.

# Introduction

## Department History

The Office of the Legal Defender (OLD) was created in 1995 under the direction of the current Legal Defender. The purpose of OLD is to provide the County with an alternate indigent defense office that can render effective services while efficiently handling a growing caseload.

Prior to the creation of OLD, defendants, who could not be represented by the Public Defender for resource limitations or conflict of interest reasons, were diverted to private counsel. Private attorneys, who serve the County under the direction of the Office of Contract Counsel (OCC), are expensive. The ability to assign conflict and overflow cases to another County office allows the County to significantly reduce its overall indigent defense costs.

OLD began operation in 1995 with a total staff of 15. Today the department has grown to 61 authorized FTE's, including 31 attorneys. During Fiscal Year (FY) 1999-2000, OLD represented the County's indigent population in almost 4,000 court cases.

## Mission

OLD has developed the following Mission Statement: "The Maricopa County Office of the Legal Defender will provide the highest quality legal representation to those indigent clients represented by the Office."

## Goals

OLD has established the following operational goals:

- Develop an effective representation for each client in an ethical fashion that protects his or her rights and ensures equal protection under the law.
- Provide the County with a cost-effective method of representation for indigent clients who would otherwise be represented by the Maricopa County Office of the Public Defender or the Office of Contract Counsel.
- Retain and develop attorneys and staff highly regarded for their respective skills in representing, investigating, or supporting the defense of assigned clientele.

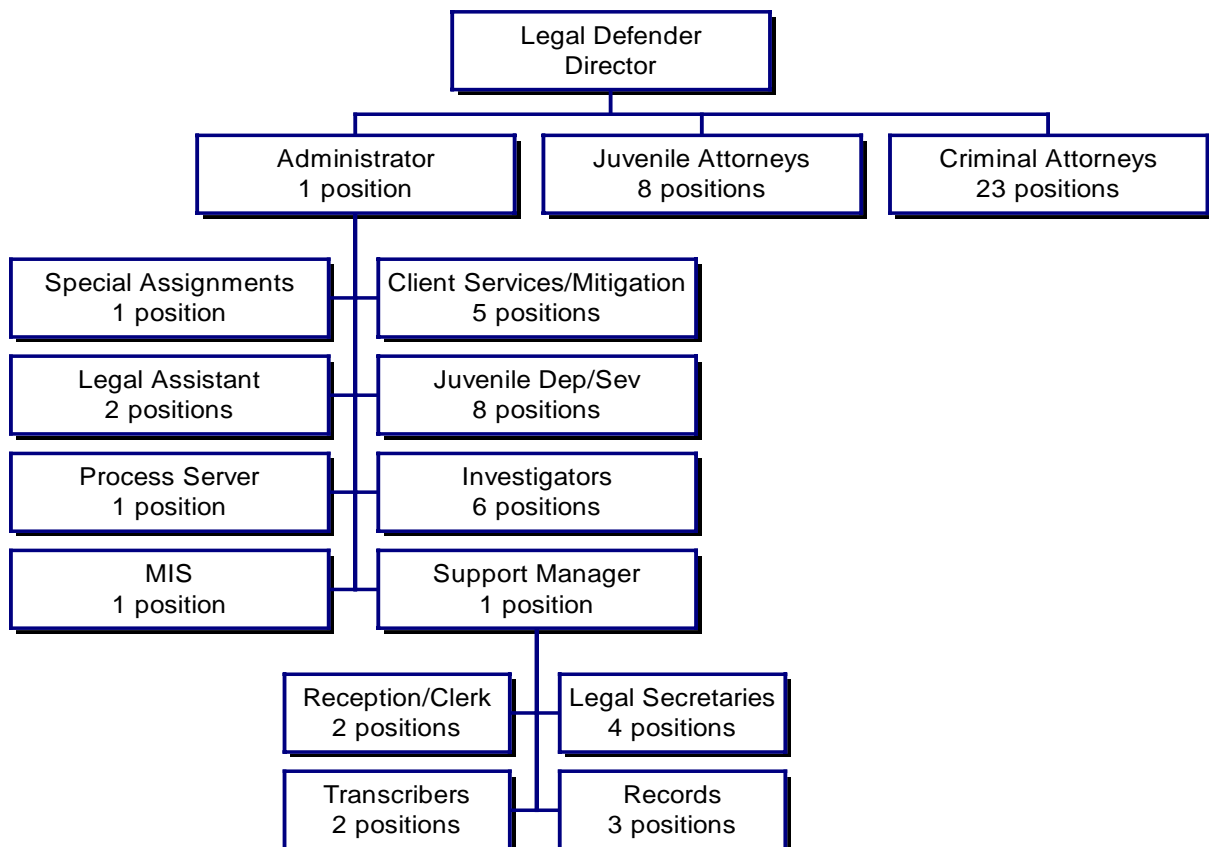


- Create an environment in which professionalism and respect for clients and fellow employees are inherent.
- Endorse measures to provide effective alternatives to imprisonment and incarceration.
- Maintain workloads that do not jeopardize any client's defense.

## Organizational Structure

The department's primary service to citizens is provided by licensed attorneys. The department's other functions, including Investigation, Mitigation, Administration, Legal Assistance, Case Preparation, and Process Service provide support for the attorneys. The chart below depicts OLD's current structure.

### Legal Defender Organization



## **Attorneys**

OLD's attorneys handle cases ranging from death penalty cases and white-collar crimes to juvenile dependency and severance cases. OLD attorneys are assigned, based on their levels of experience and their fields of interest, to handle cases in one of three areas: major felonies, regular felonies, and juvenile dependency and severance matters.

### **Criminal Attorneys**

Attorneys in the criminal division work on complex felony cases that require extensive knowledge of Arizona's court system, criminal and constitutional law, and the various rules of procedure. They must present creative defenses while maintaining heavy caseloads. OLD criminal attorneys possess an average of over twelve year's experience, with only two attorneys on staff with less than five year's courtroom experience.

### **Juvenile Dependency/Juvenile Severance Attorneys**

Juvenile Division attorneys representing parents in dependency/severance cases must deal with similar caseload and budget concerns, while meeting the special challenges of the juvenile system's civil courts. These attorneys' focus is on protecting parents' rights and preserving the integrity of Arizona families. The delicate issues presented in these cases require a sensitive approach in addition to knowledge of the laws covering dependency and severance, divorce, child support, guardianship, and paternity matters.

### **Investigation and Mitigation Services**

OLD investigators are vital to the defense team's representation of indigent clients. Investigators are responsible for locating and interviewing potential witnesses, obtaining and evaluating physical and documentary evidence, and assisting in the development of defense strategies and case theories. Investigators maintain contact with clients, other agencies, and interested parties. They also present oral and written reports. In certain cases, investigators provide critical information at trials when called upon by attorneys to testify in court.

Mitigation Services staff are utilized in death penalty cases or serious major felonies. They interview defendant family members, friends, or other pertinent sources and gather information and compile defendant profiles for the court's consideration in sentencing.

## **Caseload Management**

OLD has a flat organizational structure with respect to attorneys. All attorneys on staff report to the department Director, the Legal Defender. The time management tool used by the Director is TimeMatters®, a widely used software package that has been customized for use in a governmental law office. The software combines a database with a calendar feature to help attorneys track their caseload, as well as manage their court dates and judicial appointments.

## **Methodology and Scope**

The scope of this audit included objectives designed to determine OLD's:

- Compliance with laws and regulations
- Effectiveness of program operations
- Validity and reliability of data
- Safeguarding of resources.

This audit was performed in accordance with Government Auditing Standards.

## Department-Reported Accomplishments

**The following accomplishments were provided to the Internal Audit Department by OLD management for inclusion in this report.**

In the relatively short six years of its operations, the Office of the Legal Defender has distinguished itself in several arenas. In the legal field, the Office is regarded as a strong advocate in representing our clients' interests before the court.

- Our attorneys are recognized as knowledgeable, creative, dedicated lawyers.
- Our support staff has proven to be skilled and ardent in assisting the attorneys in championing our clients' rights.
- No death penalty sentence has ever been imposed on any of our clients.

In the technological field, our Office has gained a reputation as a leader in utilizing and customizing computer programs for case management and document production.

- Office members are given the latest computers and software to manage their casework, calendars, and tasks.
- Our case-tracking system has been studied and emulated by other law offices around the country.
- To ensure the maximum use of any software, Office members are given standard training and encouraged to take any advanced training needed.

These efforts have yielded a streamlined, efficient operation that maximizes the talents of both the attorneys and support staff.

In the business field, the Office has optimized efficiency by having the attorneys devote their practice to one specific legal assignment and by providing them with experienced, specialized support staff.

- In the criminal division, attorneys devote their time to cases in either Early Disposition Court, Justice Court, Regular Felonies or Major Felonies. Additionally, criminal attorneys are assisted by investigators, client services/mitigation specialists, and a process server.
- In the juvenile division, attorneys concentrate on the legal issues surrounding dependency and severance matters while their case preparation managers handle much of the day-to-day client contacts and many non-court meetings.
- All attorneys are provided legal secretaries to eliminate some of the time spent in simple document or calendar tasks.

These accomplishments have contributed to the Office of the Legal Defender's reputation as a respected, efficient, and motivated defense team dedicated to providing our clients the best defense possible.

# Issue 1 Caseload Management

## Summary

OLD manages and monitors its 31 attorneys' caseloads individually through a caseload management software application. The application has limited department-wide reporting and analysis capabilities. Our review of reported data found no areas of unbalanced caseloads. However, an automated monitoring and reporting function would enhance OLD's ability to efficiently utilize department personnel and effectively manage attorney caseload. OLD should continue to pursue incorporating a software application that includes enhanced reporting capabilities.

## Applicable Requirements

A balanced and equitable caseload within the department is necessary to ensure that OLD attorneys are utilized effectively, and that indigent clients are adequately represented. Under-utilizing an attorney with a caseload that is too light increases costs and is an inefficient use of County resources. Burdening an attorney with an unreasonable caseload reduces that attorney's ability to effectively represent the County's indigent population.

## Defining Case Count

Managing attorney caseload systemically is extremely difficult because of the high degree of variability between court cases. Even cases in which defendants are charged with the same offense can vary widely in their complexity and resulting resource requirements. Many large offices use a case counting and weighting system to quantify and manage attorney caseloads. These systems can be somewhat arbitrary and are not consistent between departments. Because OLD has only 31 attorneys, the Legal Defender has been able to monitor attorneys on an individual basis and ensure that caseloads are appropriate.

## Case Management Software Application

OLD uses TimeMatters® software, a time and case management software package designed for small to medium sized law firms, to manage and monitor attorney caseloads. The application allows the director to access and monitor individual attorney's case information and general department-wide case information, but does not support flexible graphics capabilities or provide complex department-wide reports for comparisons and analysis.

## ACL Software Review

Internal Audit downloaded TimeMatters® data and used Audit Command Language (ACL) software to evaluate attorney caseload and case activity. We reviewed three areas of attorney caseload and activity. These were:

- Current Caseload (number of active cases)
- Case Turnover (average number of days to complete a case)
- Case Disposition (outcome)

In absolute numbers, individual caseload and case turnover varied widely, both above and below the department average. This statistic results from the variations in court cases noted above. For example, regular felonies are less complex and require much less time to try or plead than do major felonies. Major felonies generally include homicide cases and other cases that will require more than 100 hours of attorney time. Exhibit #1 shows that some OLD attorneys have very few regular felony cases, while others have a current caseload of 30 to 40 regular felonies. This apparent imbalance is brought into perspective in Exhibit # 2, on the following page.

**Exhibit # 1 - Current Regular Felony Caseload**

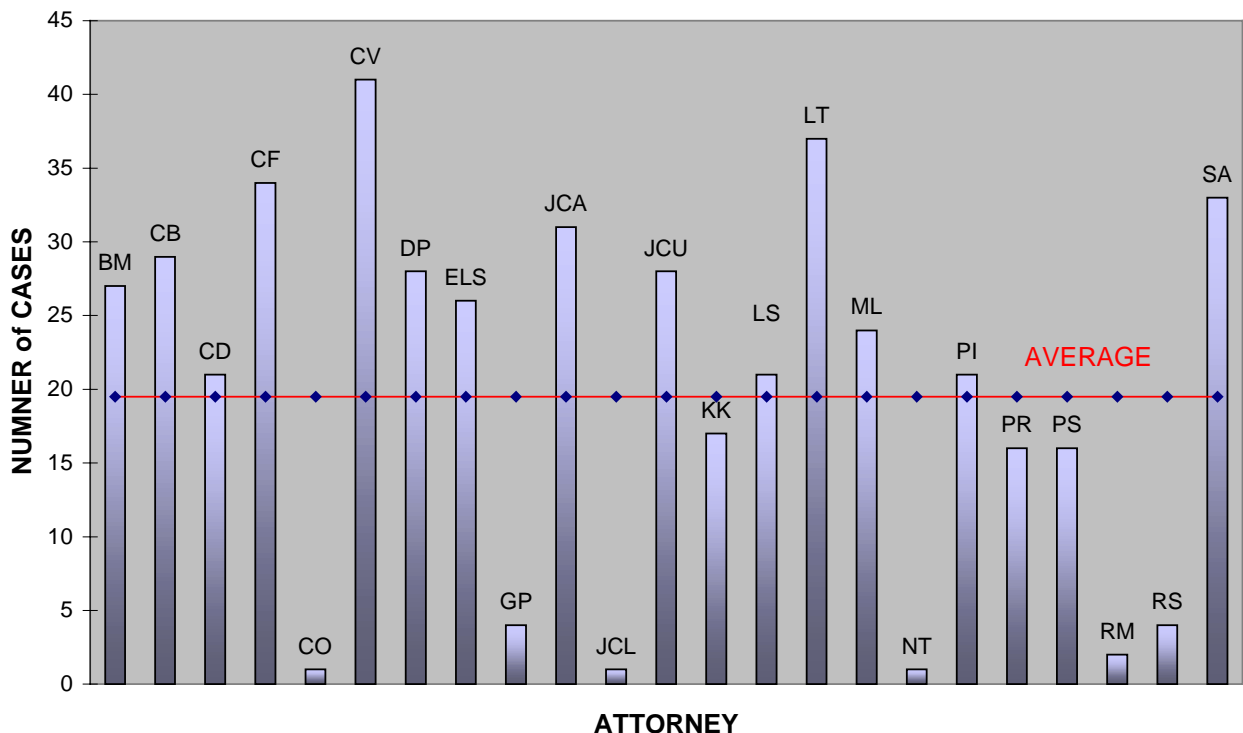
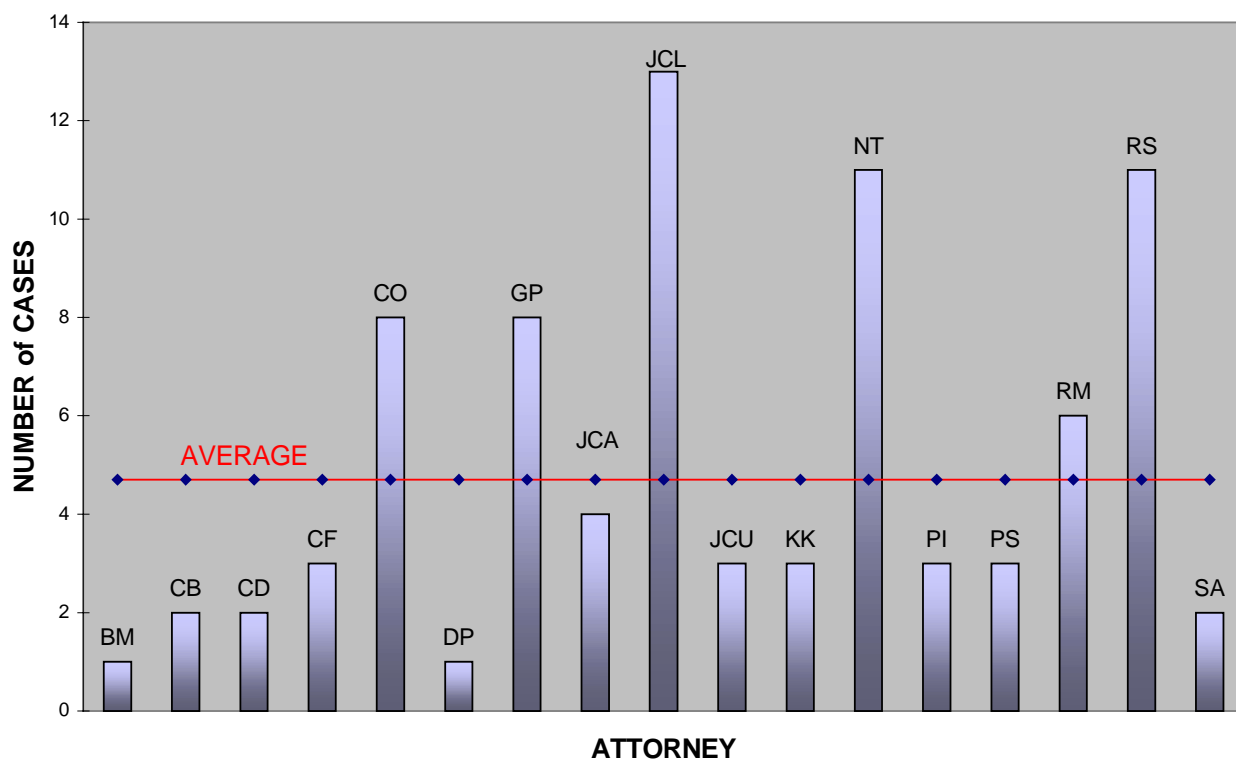


Exhibit # 2 illustrates Current Major Felony Caseload and shows an inverse relationship to the first graph. Attorneys having the smallest regular felony caseload have the largest major felony caseload.

## Exhibit #2 - Current Major Felony Caseload



We also reviewed attorney caseload in relation to attorney experience. This relationship was found not to be directly proportional. An attorney with twenty years experience cannot handle four times as many cases as an attorney having only five years experience.

Unlike the Maricopa County Public Defender's Office, the OLD does not employ inexperienced attorneys. OLD attorneys have an average of 12 years courtroom experience. We found that senior attorneys are assigned to major felonies and newer attorneys, who are assigned felonies, appear to be appropriately tasked.

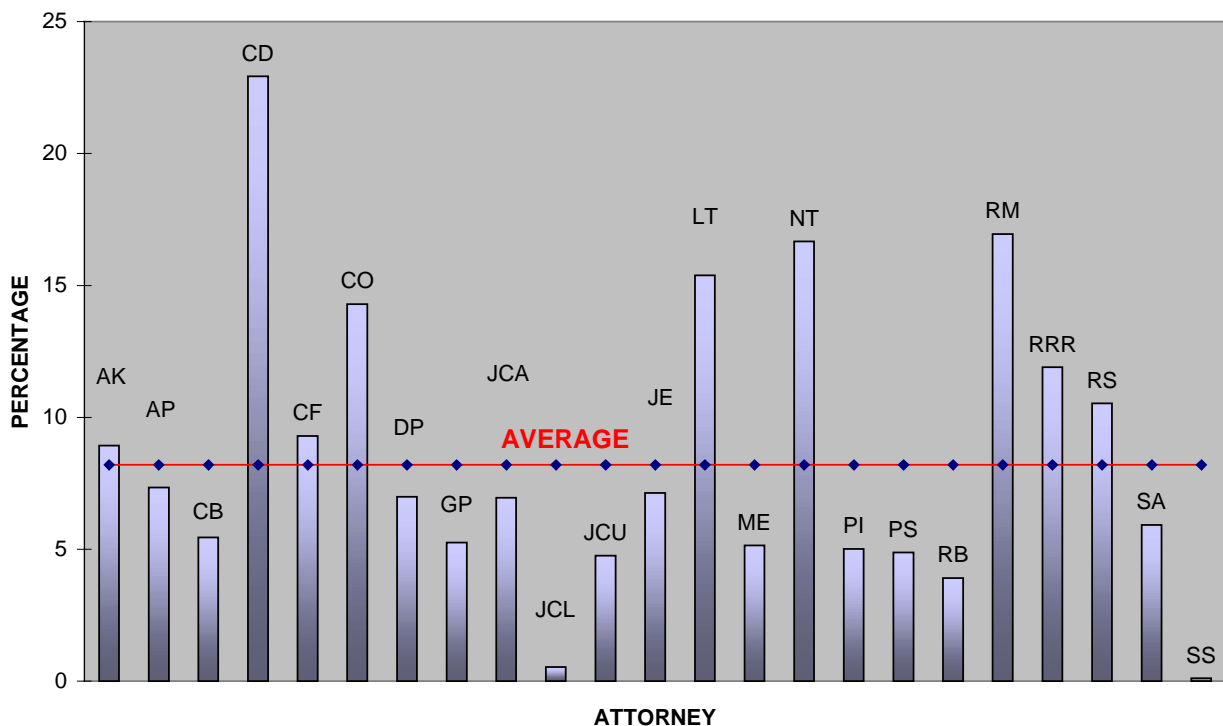
We calculated and reviewed the average days necessary to close a case, for felony cases completed over the past two fiscal years. We found considerable variation between OLD attorneys. However, much of the variation is a result of the mixture of cases classified as felonies. For example, most cases requiring low average days to completion are handled in the early disposition courts, which expedite routine cases so these are completed in a relatively short time period. In addition, some defendants are charged with multiple offenses. In these situations, regular felonies are tried along with major felonies and, therefore, remain open longer than usual. In reviewing the data with the Legal Defender, we did not note any variances that could not be explained.

We also looked at case disposition (outcome) as a potential indicator of attorney performance. The most common disposition, which is generally a positive

outcome for OLD clients, is to plead to a lesser charge. This outcome results in approximately 50 percent of the cases. We found that results for individual OLD attorneys cluster fairly close to the department average, for this outcome, indicating individual performance is as expected.

Other disposition results are less indicative of courtroom performance, but have potential significance for administrative case management. For example, attorneys must sometimes withdraw from a case for conflict-of-interest reasons. Exhibit # 3 depicts the frequency with which OLD attorneys withdraw from cases

**Exhibit # 3 - Withdrew due to Conflict**



because of a conflict of interest. A high frequency of these instances is indicative of a significant number of complex cases with various codefendants or a large number of witnesses. Quantifying a complicated population such as a group of court cases is not always a direct reflection of the attorneys involved. The data can, however, be an indicator of areas that need additional evaluation.

### Recommendation

OLD should consider enhancing the department case management software with an application that supports department-wide reporting functions. An automated monitoring and reporting function would enhance OLD's ability to efficiently utilize department personnel and effectively manage attorney caseload.



## Issue 2 Office Operations

### Summary

We reviewed OLD administrative operations, including financial reporting, payroll processing, fixed asset tracking, travel and training expenses, and administration of client trust funds. We found OLD effectively manages its administrative functions and operations. We also noted three areas in which internal controls could be strengthened. Enhancing procedures concerning fixed asset tracking, payroll reconciliation, and segregation of duties over the client trust fund would provide a more effective system of internal control and improve the safeguarding of County resources.

### Applicable Requirements

The American Institute of Certified Public Accountants' (AICPA) State and Local Government Committee, in their 1986 publication *Audits of State and Local Governments*, establishes elements of an effective system of internal controls. These elements include:

- Adequate separation of duties over cash handling functions
- Reconciliation of payroll output reports to time summary and input documentation, and
- Effective recordkeeping for fixed assets, including periodic physical inventories with appropriate reconciliation of fixed asset records.

In addition, the Department of Finance (DOF) Property Manual provides specific direction for acquiring, processing, and maintaining fixed assets.

### Client Trust Funds - Segregation of Duties

OLD maintains a trust fund account that contains contributions made by defendants' friends and family. This fund is used to pay expert witness fees and similar defense expenses. Account activity is fairly low, totaling less than \$12,000 for the past two fiscal years. We tested all receipts and disbursements made during this period and found no exceptions.

We noted, however, that OLD's procedures for handling trust fund monies lack appropriate segregation of duties. We reviewed 21 contributions and found that one individual had received, deposited, recorded, and reconciled the transaction for 11 (52%) of the contributions. Inadequate segregation over cash handling duties increases the risk that errors or irregularities can occur without being detected.

## **Payroll Processing**

We tested a sample of payroll cycles from the period under review to determine if payroll was processed correctly and if OLD's payroll procedures included effective internal controls. We found that, in general, the department's payroll processing controls were adequate. However, the department does not reconcile payroll output (i.e., amount employees are actually paid) and payroll input records. Our testing found one instance where an employee was underpaid, by eight hours, and the error was not detected.

## **Fixed Asset Accounting**

We found discrepancies in 50 percent of fixed assets tested when matching Department of Finance records to OLD fixed assets on hand. The exceptions included:

- An automobile and a fax machine no longer in OLD's possession that were listed on DOF records; automobiles were also incorrectly designated with an "F" asset number
- Multiple personal computers were recorded as a single item on the fixed asset listing
- Incorrectly recorded F/A numbers causing, for example, a F/A number assigned by DOF to a desk to be affixed to computer equipment.

Despite the discrepancies, all fixed assets in our test sample were ultimately accounted for.

We noted several E-mails and other correspondence that showed OLD's attempts to reconcile the above discrepancies. However, the communications were from calendar year 1999 and fixed assets had not yet been corrected.

## **Causes for Exceptions**

OLD Administration staff were not familiar with DOF procedures for adding and deleting fixed assets. Some discrepancies were caused by errors made while filling out asset paperwork. Similarly, staff were not aware of the need to adequately segregate client trust fund duties or perform a payroll reconciliation.

## **Recommendation**

OLD should:

- A. Strengthen controls over fixed assets and work with DOF to correct records in order to ensure compliance with County policy requirements and reduce financial exposure.
- B. Assign an individual, independent of payroll preparation, to reconcile payroll output to payroll input.
- C. Adequately segregate client trust fund job duties.

## Issue 3 System User Access and Security Controls

### Summary

OLD appears to have established adequate user access controls over its system, however, no written authorization is required or documentation is kept of user access levels. Furthermore, OLD has not developed a security policy in accordance with County policy A1605 – Electronic Information Resource Security. Inadequate user access and security controls diminish the reliability of data and increase risk of destruction or inappropriate disclosure of data. OLD should strengthen its user access and security controls.

### Requirements

*Generally Accepted Principles and Practices for Securing Information Technology Systems*, published by the U.S. Department of Commerce’s National Institute of Standards and Technology states, “system access should be based on the principle of least privilege, which states that users should be granted access only to resources they need to perform their official functions.”

County Policy A1605 requires that each department “establish security controls and practices sufficient to ensure that confidentiality, integrity, availability, and appropriate use of all electronic data and information assets will be maintained for information systems.” Departments are then instructed to create a security policy and present the policy to the CIO’s office for approval.

### Review Results

While OLD has developed procedures for establishing user access to its systems, the department does not require written authorization or documentation to be kept of user access levels. Review of 17 sample items of 69 users (25%) showed no inappropriate user access levels for the job requirements of each employee. OLD was not aware of policy A1605 and, therefore, has not developed a formal security policy.

### Recommendation

OLD should:

- A. Require written authorization and management approval for user access levels within OLD systems.
- B. Develop security policies and procedures and submit them for review to the Office of the CIO. This information should also be communicated to all employees.

## Issue 4 System Backup and Recovery

### Summary

OLD has not developed a current business continuity plan to ensure continued business operations in the event of a disaster. The department's current off-site storage location is not adequate to protect system backups, ensuring continued operations for all potential disasters. Inadequate business continuity planning, including proper backup storage, may result in lost data, expensive recovery efforts, and potential business interruption. OLD should strengthen its backup and recovery controls.

### Requirements

*The Federal Information System Controls Audit Manual (FISCAM)* published by the GAO states that departments should establish procedures to protect information resources and minimize the risk of unplanned interruptions and develop a plan to recover critical operations if interruptions occur.

### Review Results

OLD performs nightly tape backups of their entire systems. A second backup of TimeMatters®, OLD's case tracking system, is made to another server each morning. Each week, a backup tape is rotated off-site for storage. The off-site storage location is at the MIS Manager's home where the backup tape is kept in a steel box.

OLD has prepared a contingency plan for its Year 2000 rollover, however, the department has not developed a disaster recovery and/or business continuity plan to ensure continued business operations in the event of a disaster.

### Recommendation

OLD should:

- A. Expand its current contingency plan to develop a comprehensive disaster recovery and business continuity plan to ensure continued business operations in the event of a disaster. The plan should be tested periodically.
- B. Consider a new off-site storage location that would secure OLD's weekly backup tape in the event of a disaster. OLD could develop an agreement with another County department, or contract with a security vendor currently being used by many County departments.

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## **DEPARTMENT RESPONSE**